STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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| Illinois-American Water Company | : | |
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| Application for Certificate of Public | : | |
| Convenience and Necessity to Provide | : | Docket No. 07-0519 |
| Water Service to Parcels in Peoria | : | |
| County, Illinois, pursuant to Section 8-406 | : | |
| of the Public Utilities Act. | : | |

REPLY TO BRIEF ON EXCEPTIONS OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION

Now comes the Staff of the Illinois Commerce Commission ("Staff"), by its attorneys, and pursuant to Section 200.830 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.830, and, in reply to the Brief on Exceptions and Exceptions of the Rural Route 150 Water District (hereafter “RR 150”), states as follows:

RR 150 alleges, as it has throughout the proceeding, that the Commission should deny the Illinois American Water Company (hereafter “IAWC”) the Certificate of Public Convenience and Necessity it seeks based on the premise such certification would “undermine the overall feasibility of RR150 to serve the … population of the [RR 150] district” residing outside of the area in which IAWC seeks to be certificated. RR 150 BOE at 2. According to RR 150, this would result from the fact that IAWC seeks certification in the areas of RR 150’s territory that are least expensive to serve. Id. Were the Commission to grant IAWC its certificate, RR 150 contends that this might render RR 150 unable to economically serve the remaining residents of RR 150, thereby resulting in such

having no service whatever, an outcome that RR 150 deems inconsistent with the public convenience and necessity. Id.

The Staff has addressed RR 150's arguments in detail in its Initial Brief, Reply Brief, and Brief on Exceptions, and will refrain from reiterating those responses in detail. The Staff merely notes that, as the *Proposed Order* correctly found: (a) none of the residents of RR 150 currently have any water service; (b) there is no indication that RR 150 is going to provide any water service to anyone at any time in the foreseeable future; and (c) it is in the public interest to provide, through certification of IAWC, a secure, reliable and safe water supply to a substantial number of the residents of RR 150 at an early date, rather than "proceeding on the assumption that RR150 will be able to serve all of such customers at some indeterminate time in the future[.]" Proposed Order at 9.

RR 150 asserts that it "objects to the [Proposed Order's] conclusion that it is better to serve a few citizens now than all at a later date." RR 150 BOE at 2. The problem with this assertion, of course, is that – as the *Proposed Order* recognizes – RR 150's idea of "a later date" is beginning to look a great deal like "at some point in the distant future", or indeed "never". Without question, RR 150 is correct that in the best of all possible worlds, all citizens of RR 150 would have access to secure, reliable and safe water supply. RR 150, however, shows no signs of actually providing such access to anyone whatever, and waiting for it to progress beyond a feasibility study is clearly not in the public interest here.

RR 150 relies on two Illinois Supreme Court cases for the proposition that in reviewing applications for certificates of public convenience and necessity, the

Commission must consider the public interest to be primary and controlling; the convenience and necessity required to support an order of the commission is that of the public and not of any individual or number of individuals. RR 150 BOE at 1. While the Staff concurs in the general principle, the decisions in question avail RR 150 not at all.

The first, Thompson v. Commerce Comm'n, 1 Ill. 2d 350; 115 N.E.2d 622; 1953 Ill. Lexis 424 (1953), dealt with a railroad's appeal from a Commission decision denying it authority to discontinue certain train service along a primarily rural route between Menard and Mount Vernon, which was used for mixed passenger and freight service, the latter consisting of "small freight shipments, merchandise, as well as cream and chickens, … mail and parcel post." Thompson at 352; 115 N.E.2d at 623; 1953 Ill. Lexis 424 at 2-3. The record reflected that the trains in question were little-used and that ridership was declining; that passenger and freight revenues on the routes were declining; and that the railroad seeking to discontinue the service had operated the trains at an increasing loss over some years. Id. at 353; 115 N.E.2d at 624; 1953 Ill. Lexis 424 at 4-5.

The Supreme Court ruled that the Commission's order denying the railroad authority to discontinue service was properly set aside. Thompson at 359; 115 N.E.2d at 627; 1953 Ill. Lexis 424 at 14. The Court reasoned that the public convenience and necessity did not require the "accommodation of only a few persons[,]" and noted that in the case before it, "the portion of the public that is presently utilizing the facilities of the [rail]road represents a very small segment

of the population which the railroad would ordinarily serve." Id. at 358; 115 N.E.2d at 626; 1953 Ill. Lexis 424 at 12. In other words, the Supreme Court in Thompson found that the public interest could not be dictated by a small number of people, which is, of course, precisely what RR 150 seeks to do here. RR 150's reliance upon Thompson is therefore ill-advised.

The second case upon which RR 150 relies is Roy v. Commerce Comm'n, 322 Ill. 452; 153 N.E. 648; 1926 Ill. Lexis 1150 (1926). There, the Supreme Court overturned a Commission finding that a railroad was entitled to a certificate of public convenience to build facilities that connected two points along the line of another railroad that happened to be its *de facto* corporate parent. Roy, 322 Ill. at 457-460; 153 N.E. at 651-52; 1926 Ill. Lexis 1150 at 8-16. The Court observed that the proposed railroad was in fact a method for the corporate parent to acquire additional right-of-way and "w[ould] simply result in two railroads between two points a mile and a quarter apart in these neighboring municipalities. Id. at 458-59; 153 N.E. at 651; 1926 Ill. Lexis 1150 at 11. The duplication of facilities having been a basis for the Supreme Court's decision, it is inapposite here, where – as the Staff noted in its Reply Brief – the problem confronting the Commission here is not duplication of facilities, but rather the complete lack of facilities. Staff RB at 7.

RR 150 raises nothing new in its Brief on Exceptions. Its arguments are simply reiterations of those properly rejected by the *Proposed Order*. The Staff urges the Commission to likewise reject them.

Accordingly, the Staff requests that the Commission adopt the *Proposed Order* in its entirety, with the minor amendments identified in the Staff's Brief on Exceptions.

Respectfully submitted,

/s/_____

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